IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 31004 of 2003(N)

PETITIONER:

R.JAYACHANDRAN PILLAI, S/O.OMANA AMMA,
(FORMERLY WORKING AS PEON, M.M.H.S,UPPOODU)
PULLERIL, KOTTAKKAKAM, PERINAD (PO),
KOLLAM.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:
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1. **THE DIRECTOR OF PUBLIC INSTRUCTIONS,**
   THIRUVANANTHAPURAM.

2. **THE DISTRICT EDUCATIONAL OFFICER, KOLLAM.**

3. **SRI.K.S.RAVINDRAN NAIR, ONE OF THE JOINT MANAGERS**
   M.M. HIGHER SECONDARY SCHOOL,
   UPPOODU, EAST KALLADA, KOLLAM.

4. **SMT.M.VALSALA DEVI, ONE OF THE JOINT MANAGERS**
   M.M. HIGHER SECONDARY SCHOOL,
   UPPOODU, EAST KALLADA, KOLLAM.

5. **STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO THE GOVERNMENT
   DEPARTMENT OF GENERAL EDUCATION,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

(ADDITIONAL 6TH RESPONDENT IMPLEADED)

6. **THE PRICIPAL-IN-CHARGE,**
   M.M.HIGHER SECONDARY SCHOOL, UPPOODU,
   EAST KALLADA, KOLLAM DISTRICT.

(* ADDITIONAL 6TH RESPONDENT IS IMPLEADED AS PER ORDER DATED 3.10.2007 IN I.A.No.12339/2003)

BY ADV. SRI.P.B.SURESH KUMAR
SRI.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
GOVERNMENT PLEADER SMT. M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF REPRESENTATION DATED 6.6.2001 SUBMITTED BY PETITIONER TO THE JOINT MANAGERS.

EXT.P2: COPY OF LETTER DATED 9.6.2001 SENT BY SRI.K.S.RAVINDARAN NAYAR TO THE 2ND RESPONDENT.

EXT.P3: COPY OF APPOINTMENT ORDER DATED 6.6.2001 IN RESPECT OF THE PEITIONER.

EXT.P4: COPY OF REPRESENTATION DT.7.5.2002 SUBMITTED BY PETITIONER BEFORE THE JOINT MANAGERS.

EXT.P5: COPY OF REPRESENTATION DT.11.5.2002 SUBMITTED BY THE PEITIONER TO THE 2ND RESPONDENT.

EXT.P6: COPY OF STAFF FIXATION ORDER DATED 19.1.2002 FOR THE YEAR 2001-02 ISSUED BY THE 2ND RESPONDENT.

EXT.P7: COPY OF REPRESENTATION DT.20.5.2002 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P8: COPY OF JUDGMENT DATED 11.6.2002 IN O.P.No.15457/2002-M.

EXT.P9: COPY OF ORDER No.P2.6163/02/K.DIS. DATED 4.9.2002 ISSUED BY THE D.E.O. KOLLAM.

EXT.P10: COPY OF LETTER DATED 18.11.2002 ISSUED BY SRI.K.S.RAVINDRAN NAYAR.

EXT.P11: COPY OF LETTER DATED 21.11.2002 ISSUED BY SRI.K.S.RAVINDRAN NAYAR.

EXT.P11(a): COPY OF APPOINTMENT ORDER DATED 14.11.2002 IN RESPECT OF SRI.B.JOHN.

EXT.P11(b): COPY OF APPOINTMENT ORDER DT.14.11.2002 IN RESPECT OF PETITIONER.

EXT.P11(c): COPY OF STATEMENT OF CHANGE OF STAFF DT.NIL.

EXT.P11(d): COPY OF DECLARATION DT.14.11.2002 BY THE JOINT MANAGERS.

EXT.P11(e): COPY OF EXTRACT OF THJE SCHOOL ADMISSION REGISTER-DT. 3.1.95.

EXT.P11(f): COPY OF MEDICAL CERTIFICATE DT.18.11.2002 IN RESPECT OF PETITIONER.

EXT.P11(g): COPY OF CONDUCT CERTIFICATE DT. 18.11.2002 IN RESPECT OF PETITIONER.

EXT.P11(h): COPY OF DECLARATION DT.14.11.2002 BY THE PETITIONER.

EXT.P12: COPY OF LETTER DT.26.11.2002 BY SRI.K.S.RAVINDRAN NAYAR.

EXT.P13: COPY OF THE LETTER DATED 27.9.2004 FROM 3RD RESPONDENT TO THE 4TH RESPONDENT.

EXT.P14: COPY OF A LETTER DATED 30.9.2004 ADDRESSED TO THE DEO, KOLLAM BY THE JOINT MANAGERS.

EXT.P15: COPY OF APPOINTMENT ORDER DATED 30.9.2004 ISSUED BY THE JOINT MANAGERS APPOINTING THE PETITIONER AS PEON W.E.F. 30.9.2004.

RESPONDENTS EXHIBITS:

EXT.R4(a): COPY OF THE ORDER PASSED BY THE DIRECTOR OF PUBLIC INSTRUCTION DATED 8/3/2004.

EXT.R4(b): COPY OF THE REVISION PETITION FILED BY ME BEFORE THE GOVERNMENT AGAINST EXT.R4(a) ORDER DATED 1.4.2004.

TRUE COPY

P.A TO JUDGE

S.SIRI JAGAN,J

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W.P.(C).No.31004 of 2003

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Dated this the 30th day of November, 2007

JUDGMENT

The petitioner's case in this writ petition is that by virtue of his prior approved service as a Peon for the period from 20.6.1991 to 22.8.1991 in the school managed by respondents 3 and 4, he is entitled to be preferred for appointment to the post of peon which arose on 20.7.1998 on the death of one Sri.Sugathan. The contention of the petitioner is that in spite of his repeated requests, because of the difference of opinion between the joint managers namely, respondents 3 and 4, the petitioner was not given the appointment, to which he was entitled to, by virtue of his right under Rule 51 A of Chapter XIVA of the Kerala Service Rules. The petitioner therefore seeks the following reliefs:

> "(i)to issue a declaration that the petitioner is the most suitable candidate for appointment to the vacant post of Peon/FTM in the 3rd respondent's school from 20.7.1998 onwards on the basis of his claim under Rule 51 A chapter XIVA KER:
> (ii)to direct the 2nd respondent to approve the appointment of the petitioner as FTM/Peon from 20.7.1998 and give all consequential benefits including arrears of salary.
> (iii)to direct the 1st and 2nd respondents to initiate action under Rule 7 Chapter III KER against the 4th respondent and to

disqualify her from continuing as Joint Manager:
(iv)to issue such other further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

2. In the counter affidavit filed by the DEO it is specifically stated in Para 3 as follows: " A vacancy of Peon occurred in the school due to the death of Sri.Sugathan, Peon on 20.7.1998 while he was in service. As Sri.R.Jayachandran Pillai is a Rule 51 A claimant with effect from 22.8.91 he have (sic) to be appointed in that vacancy." In view of the statement in the counter affidavit right of the petitioner to be appointed in the vacancy which arose on 20.7.98 cannot now be disputed. The fact that the petitioner has been requesting for such appointment ever since the vacancy arose is very clear from the documents produced along with this writ petition. In fact he moved the DEO and the DEO passed Ext.P9 order directing the Joint managers to appoint him in the next arising vacancy of Peon/FTM. In spite of the same one of the Joint Managers refused to sign the appointment order Ext.P11(b) issued to the petitioner. As a result, the petitioner's appointment could not be approved. By interim order dated 14.9.2004, this Court

directed as follows:

> "There is no dispute that there are two vacancies available for accommodating both the writ petitioners. It is submitted that there are various other disputes in the matter. Those things can be sorted out at the time of disposal of the writ petitions. There will be a direction to the joint managers to appoint the petitioners against the available vacancies. The needful shall be done within a period of one week from the date of production of a copy of this order. The claim for vacancy which has arisen in 1998 made by the petitioner at the time of disposal of the writ petition. The educational authorities will provisionally approve the appointment made by the joint managers."

3. It is submitted that pursuant to the interim order the petitioner has been appointed and his appointment has been provisionally approved. The respondents 3 and 4 have no chosen to file a counter affidavit to controvert the averments of the petitioner or those of that of the DEO in the counter affidavit. From the facts disclosed to me it is abundantly clear that the joint managers namely respondents 3 and 4 are solely responsible for this situation for which the petitioner cannot be asked to suffer.

4. It is now submitted before me that the DEO is now holding charge of the manager of the school. Accordingly this writ petition is disposed of with the following directions. The DEO acting as manager of the school shall issue an appointment

order appointing the petitioner with effect from 20.7.1998 and approve such appointments. The DEO shall see that salary due to the petitioner is disbursed to the petitioner if the appointment is otherwise in order. The salary paid to the petitioner shall be recovered from respondents 3 and 4 since they are responsible for denial of appointment to the petitioner for which he was legally entitled.

The writ petition is disposed of accordingly.

S.SIRI JAGAN, JUDGE

dvs